JUDICIAL REFORM INDEX

FOR

MACEDONIA

MARCH 2002

PROMOTING THE RULE OF LAW

ABA CEELI

www.abanet.org/ceeli

USAID

CENTRAL AND EAST EUROPEAN LAW INITIATIVE

JUDICIAL REFORM INDEX

FOR

MACEDONIA

March 2002

 This publication was made possible through support provided by the U.S. Agency for International Development Macedonia Mission, under the terms of the Associate Cooperative Agreement No. 165-A-00-00-00102-00 and Leader Cooperative Agreement No. ENI-A-00-00-00003-00. The opinions expressed herein are those of the author(s) and do not necessarily reflect the view of the U.S. Agency for International Development.

ISBN: 1-59031-134-5

Printed in the United States of America

TABLE OF CONTENTS

Introduction

The Judicial Reform Index (JRI) is a tool developed by the American Bar Association's Central and East European Law Initiative (ABA/CEELI). Its purpose is to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable ABA/CEELI, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

ABA/CEELI embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, ABA/CEELI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after a decade of working in the field on this issue, ABA/CEELI has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. This assessment will *not* provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system.

Assessing Reform Efforts

Assessing a country's progress towards judicial reform is fraught with challenges. No single criteria may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret "evidence of impartiality, insularity, and the scope of a judiciary's authority as an institution." Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

> (1) the reliance on formal indicators of judicial independence which do not match reality, (2) the dearth of appropriate information on the courts which is common to comparative judicial studies, (3) the difficulties inherent in interpreting the significance of judicial outcomes, or (4) the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his "judicial effectiveness score," Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, *Judicial Protection of the Constitution in Latin America*, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).

> The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated . . . the independence of some countries' courts, placing such dependent courts as Brazil's ahead of Costa Rica's, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615.

Reliance on subjective rather than objective criteria may be equally susceptible to criticism. *E.g.*, Larkins, *supra*, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: "[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy." Larkins, *supra,* at 616.

ABA/CEELI's Methodology

ABA/CEELI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary; Council of Europe Recommendation R(94)12 "On the Independence, Efficiency, and Role of Judges";* and *Council of Europe, the European Charter on the Statute for Judges.* Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications.

Drawing on these norms, ABA/CEELI compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, ABA/CEELI developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to European concepts, of judicial structure and function. Thus, certain factors are included that an American or European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, ABA/CEELI reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, ABA/CEELI determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a "scoring" mechanism was one of the most difficult and controversial aspects of this project, and ABA/CEELI debated internally whether it should include one at all. During the 1999-2001 time period, ABA/CEELI tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI's Executive and Advisory Boards, as well as outside experts, ABA/CEELI decided to forego any attempt to provide an overall scoring of a country's reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system.

Despite this general conclusion, ABA/CEELI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive, neutral, or negative*. These values only reflect the relationship of that statement to that country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the

statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it will be given a "neutral." *Cf.* Cohen, *The Chinese Communist Party and 'Judicial Independence': 1949-59*, 82 HARV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from "a completely unfettered judiciary to one that is completely subservient"). Again, as noted above, ABA/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin's criticisms, ABA/CEELI determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and—as JRIs are updated—within a given country over time.

Social scientists could argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the assessment is to help ABA/CEELI — and its funders and collegial organizations — determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues raised (such as judicial salaries and improper outside influences), of course, cannot necessarily be directly and effectively addressed by outside providers of technical assistance. ABA/CEELI also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most exquisitely educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well-trained. Moreover, the nexus between outside assistance and the country's judiciary may be tenuous at best: building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. ABA/CEELI offers this product as a constructive step in this direction and welcomes constructive feedback.

Acknowledgements

Lisa Dickieson, Director, Judicial Reform Programs, the American Bar Association's Central and East European Law Initiative (ABA/CEELI) (1995 to 2000), and Mark Dietrich, Member, New York State Bar and Advisor to ABA/CEELI developed the original concept and design of the JRI. Scott Carlson, Director, Judicial Reform Programs at ABA/CEELI (2000-Present) directed the finalization of the JRI. Assistance in research and compilation of the JRI was provided by Jenner Bryce Edelman, Program Associate at ABA/CEELI, and James McConkie, Student Intern, ABA/CEELI.

During the course of developing the JRI, ABA/CEELI benefited substantially from two expert advisory groups. ABA/CEELI would like to thank the members of ABA/CEELI's First Judicial Advisory Board, including Tony Fisser, Marcel Lemonde, Ernst Markel, Joseph Nadeau, Mary Noel Pepys, and Larry Stone, who reviewed earlier versions of this index. Additionally, ABA/CEELI would like to thank the members of its Second Judicial Advisory Board, including

Luke Bierman, Macarena Calabrese, Elizabeth Dahl, Elizabeth Lacy, Paul Magnuson, Nicholas Mansfield, Aimee Skrzekut-Torres, Roy T. Stuckey, Robert Utter, and Russell Wheeler, who stewarded its completion. Finally, ABA/CEELI also expresses its appreciation to the experts who contributed to the ABA/CEELI Concept Paper on Judicial Independence: James Apple, Dorothy Beasley, Nicholas Georgakopolous, George Katrougalos, Giovanni Longo, Kenneth Lysyk, Roy Schotland, Terry Shupe, Patricia Wald, and Markus Zimmer.

Macedonia Background

Legal Context

The Former Yugoslav Republic of Macedonia became independent in 1991, following the breakup of the former Yugoslavia. Its court system was established in the 1991 Constitution and subsequently enacted laws.

In early 2001, ethnic Albanian militants began an armed insurgency campaign in the area of the country bordering Kosovo. Following an internationally facilitated cease-fire, ethnic Macedonian and Albanian leaders signed the Framework Agreement and its annexes, which preserved a unified, multiethnic state with greater rights for minority groups. The Assembly (national legislature) subsequently ratified the Framework Agreement and amended the Constitution, as required by the Agreement.

History of the Judiciary

Macedonia emerged from centuries of Ottoman rule in the early twentieth century to become part of Yugoslavia. The most significant and enduring influence on the judiciary is the legacy of post-World War II communist Yugoslavia. The highest courts currently in existence, the Supreme Court and Constitutional Court, date from the communist era. A new Law on Courts that went into effect in 1996 significantly restructured the courts, eliminating several specialized courts and creating regional appellate courts.

Structure of the Courts

The **Constitutional Court** determines whether statutes conform to the Constitution and protects certain specified rights and freedoms of individuals. It is composed of nine judges. Anyone may file an initiative in the Constitutional Court.

The **Supreme Court** is the highest appellate court. It hears appeals from the courts of appeals. It also has an administrative law department with jurisdiction over all appeals of final decisions by administrative organs. It is currently composed of 25 judges.

There are three **courts of appeals**, located in Skopje, Bitola and Stip. They are second-instance courts that have jurisdiction over appeals from the basic courts.

The **basic courts** are courts of first instance in all civil and criminal matters. There are 27 basic courts in Macedonia.

Conditions of Service

Qualifications

All judges must have formal university-level legal training. However, there is no requirement that new judges have practiced before tribunals, nor are they required to take any specific courses before taking the bench. New basic court judges must spend two years in a court apprenticeship, pass the bar exam and spend at least five years as court assistants before assuming their roles. Judges at the courts of appeals and Supreme Court are required to have nine and twelve years of post-bar exam legal experience, respectively.

Appointment and Tenure

All judicial nominations are made by the Republic Judicial Council (RJC), whose choices are submitted to the Assembly for formal appointment. The RJC has seven members, each of whom must be outstanding members of the legal profession. All judges have life tenure.

Constitutional Court judges are appointed to non-renewable, nine-year terms by the Assembly. The RJC nominates candidates for two positions, the President of the Republic nominates candidates for another two positions, and the Assembly nominates the remaining five, as well as decides on all Constitutional Court nominations. Under the new constitutional provisions mandated by the Framework Agreement, three of the nine Constitutional Court judges must be chosen by a majority of the Assembly representatives that includes a majority of the total number of representatives claiming to belong to minority communities.

Training

The law provides that judges have an obligation and a right to obtain continuing legal education. The Center for Continuing Education (CCE), established by the Macedonian Judges Association and Ministry of Justice, provides continuing legal education programs to judges and court staff.

Assessment Team

The Macedonia JRI 2002 Analysis assessment team was led by Nicolas Mansfield and benefited in substantial part from the efforts of Nena Ivanovska and Mark Dietrich. The conclusions and analysis are based on interviews that were conducted in Macedonia in March 2002 and relevant documents that were reviewed at that time. ABA/CEELI Washington staff members Scott Carlson, Wendy Betts, Sokol Shtylla, and Julie Broome served as editors. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.

Macedonia JRI 2002 Analysis

The Macedonia JRI 2002 Analysis reveals a judicial reform effort that has made important strides over the past several years. Nevertheless, the judiciary still struggles to cope with major challenges that are typical in the region, including a lack of respect for judicial power, inadequate funding, and substantial case backlogs. ABA/CEELI would like to underscore that the factor correlations and conclusions possess their greatest utility when viewed in conjunction with the underlying analysis. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future JRI assessments. ABA/CEELI views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

I. Quality, Education, and Diversity		
Factor 1	**Judicial Qualification and Preparation**	**Negative**
Factor 2	**Selection/Appointment Process**	**Neutral**
Factor 3	**Continuing Legal Education**	**Positive**
Factor 4	**Minority and Gender Representation**	**Negative**
II. Judicial Powers		
Factor 5	**Judicial Review of Legislation**	**Positive**
Factor 6	**Judicial Oversight of Administrative Practice**	**Neutral**
Factor 7	**Judicial Jurisdiction over Civil Liberties**	**Neutral**
Factor 8	**System of Appellate Review**	**Positive**
Factor 9	**Contempt/Subpoena/Enforcement**	**Negative**
III. Financial Resources		
Factor 10	**Budgetary Input**	**Negative**
Factor 11	**Adequacy of Judicial Salaries**	**Negative**
Factor 12	**Judicial Buildings**	**Negative**
Factor 13	**Judicial Security**	**Positive**
IV. Structural Safeguards		
Factor 14	**Guaranteed Tenure**	**Positive**
Factor 15	**Objective Judicial Advancement Criteria**	**Neutral**
Factor 16	**Judicial Immunity for Official Actions**	**Neutral**
Factor 17	**Removal and Discipline of Judges**	**Neutral**
Factor 18	**Case Assignment**	**Negative**
Factor 19	**Judicial Associations**	**Positive**
V. Accountability and Transparency		
Factor 20	**Judicial Decisions and Improper Influence**	**Negative**
Factor 21	**Code of Ethics**	**Negative**
Factor 22	**Judicial Conduct Complaint Process**	**Neutral**
Factor 23	**Public and Media Access to Proceedings**	**Neutral**
Factor 24	**Publication of Judicial Decision**	**Negative**
Factor 25	**Maintenance of Trial Records**	**Negative**
VI. Efficiency		
Factor 26	**Court Support Staff**	**Neutral**
Factor 27	**Judicial Positions**	**Neutral**
Factor 28	**Case Filing and Tracking Systems**	**Negative**
Factor 29	**Computers and Office Equipment**	**Neutral**
Factor 30	**Distribution and Indexing of Current Law**	**Negative**

I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

Judges have formal university level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.

Conclusion	***Correlation: Negative***
Judges generally have university training and must have had a number of years experience before being eligible for appointment, but there is no requirement that judges receive any additional, specialized training before they take the bench.	

Analysis/Background:

The Law on the Courts provides that judges must have graduated from the law faculty and have passed the bar exam. LAW ON COURTS art. 43, O.G.R.M. Nos. 36/95, 45/95 [hereinafter the LAW ON COURTS]. Before being eligible to take the bar exam, law school graduates must serve as an apprentice for two years; those interested in pursuing a judicial career typically serve two years as a court intern in the basic or appellate courts. LAW ON COURTS art. 97; LAW ON THE BAR EXAM arts. 2-3, O.G.S.F.R.Y. 26/80, 7/88. In addition, a basic court judge must have at least five years of work experience with confirmed positive results in his or her legal work after passing the bar exam. LAW ON COURTS art. 43. This experience generally is in the position of court assistant in a particular court. For a court of appeals judge and a Supreme Court judge, the requirements are nine and twelve years, respectively. *Id*. A Supreme Court judge may be selected from the ranks of full or associate law professors who have taught for over ten years in a subject connected with judicial practice. *Id*. There are no specific requirements of years of experience for judges of the Constitutional Court. They simply must be in "the ranks of outstanding members of the legal profession." CONSTITUTION OF THE REPUBLIC OF MACEDONIA art. 109 (4), O.G.R.M. 52/91 [hereinafter CONST.]

The quality of preparation provided by service as a court intern and court assistant depends largely on the judge (or judges) under which an intern or assistant works, as there is no systematic program of preparation and instruction. Interns do generally rotate between departments during their apprenticeships in an organized fashion, but the quality of mentoring they receive varies considerably, and there is little monitoring of their performance to determine whether they are gaining relevant skills. Since 1999, the Center for Continuing Education (CCE), a joint initiative of the Macedonian judges Association (MJA) and the Ministry of Justice (see Factor 3 below), has provided both substantive and computer-related training to court interns. Newly appointed judges are not required to undergo any additional training before they take the bench.

Factor 2: Selection/Appointment Process

Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.

Conclusion	***Correlation: Neutral***
The law and supporting regulations require that judicial candidates meet certain basic objective criteria. The Republic Judicial Council responsible for making nominations has been criticized as overly political, and judges are ultimately appointed by the Assembly.	

Analysis/Background:

According to the Constitution, the seven-member Republic Judicial Council (RJC) proposes all judicial candidates for the regular courts to the Assembly. CONST. art. 105. The Assembly may appoint or reject candidates proposed by the RJC. CONST. art. 68; LAW ON COURTS arts. 38-39. If the Assembly rejects a proposed candidate, the RJC proposes a new candidate. If the RJC concludes that no candidates meet the requirements for a particular judicial position, it must notify the Assembly, which in turn must readvertise the position. LAW ON THE REPUBLIC JUDICIAL COUNCIL art. 14, O.G.R.M. 80/92 [hereinafter LAW ON THE RJC].

According to the Constitution, the RJC members must be "outstanding members of the legal profession." CONST. art. 104(3) (a provision in the Law on the RJC requiring that four of the seven RJC members be judges was ruled an unconstitutional limitation of Article 104(3) by the Constitutional Court). DECISION OF THE CONSTITUTIONAL COURT OF MACEDONIA, O.G.R.M. No. 26/93, Section 632. The President of the Republic proposes two of the seven members of the RJC, subject to the approval of the Assembly, which elects all members of the RJC. CONSTITUTION OF MACEDONIA arts. 84, 104(2). As a result of recent constitutional changes required by the Framework Agreement, three of the seven RJC members are to be chosen by a majority of the Assembly representatives that includes a majority of the total number of representatives claiming to belong to minority communities. FRAMEWORK AGREEMENT art. 4.3 and Annex A, arts. 104. Members of the RJC serve six-year terms, and may be reappointed once. CONST. art. 104(3).

The RJC has its own office and staff. The RJC considers nominees for appointment on the basis of "working qualities and recommendations" and on an "impartial estimation of the candidate's professional and moral qualities, professional competency, and experience exercised during his previous work." LAW ON THE RJC art. 13. The RJC has adopted a regulation outlining the criteria for the election and advancement of judges. These criteria include:

- Grade point average at law school;
- Work experience in courts or public prosecutors' offices;
- Attendance and participation in seminars;
- Number of cases resolved during a year;
- Number of verdicts confirmed by the appellate courts;
- Number of reversals;
- Backlog of cases;
- Average length of time before a decision is rendered;
- The number of cases where the main hearing or the verdict was postponed and why; and

- Efforts to pursue continuing legal education, or to improve the judge's knowledge and skills.

RJC REGULATION NO. 81/2, SECTION V, (June 21, 1994).

In reviewing candidates, the RJC solicits the opinion of a candidate's court, as well as that of the Minister of Justice and the Chairman of the Supreme Court. LAW ON THE RJC arts. 11, 13. It has been the practice of most Ministers to present their views orally at sessions of the RJC. When considering applications for the courts of appeals or the Supreme Court, the RJC also usually interviews individual candidates.

Once the RJC forwards its proposed candidates to the Assembly, the judicial commission of the latter body reviews them. The President of the RJC typically appears before the commission to defend the proposed candidates. However, there is no real public debate on the merits of the candidates. The President of the RJC presents a generic pro forma defense of the RJC candidates, and the discussion generally is very limited. The Assembly does not provide an explanation when it rejects a candidate. It is not uncommon for the Assembly to reject candidates proposed by the RJC. For example, in the past two years there were two well-publicized instances in which the Assembly rejected RJC candidates for the Supreme Court.

Many respondents felt that the RJC is influenced by political forces, with RJC members doing the bidding of the political parties that insured their election to the RJC. Several respondents stated that nepotism and political favoritism were ongoing problems at the RJC. One example cited was the 2001 appointment of the wife of the Minister of Agriculture, a basic court judge with little experience, to a position on one of the courts of appeals.

Proposals of candidates for the Constitutional Court are not within the exclusive purview of the RJC. The RJC proposes candidates for two positions on the Court, and the President of the Republic proposes candidates for another two positions. CONST. arts. 105, 84. Election of all nine Constitutional Court members is a power reserved for the Assembly, therefore the candidates proposed by the RJC and the President must also be approved by the Assembly. *Id*. at art 109. Under the new constitutional provisions mandated by the Framework Agreement, three of the nine Constitutional Court judges must be chosen by a majority of the Assembly representatives that includes a majority of the total number of representatives claiming to belong to minority communities. FRAMEWORK AGREEMENT art. 4.3 and Annex A, art. 109.

Factor 3: Continuing Legal Education

Judges must undergo, on a regular basis and without cost to them, professionally-prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

Conclusion	***Correlation: Positive***
The law provides that judges have an obligation to obtain continuing legal education. The Center for Continuing Education (CCE), established by the Macedonian Judges' Association and Ministry of Justice, provides continuing legal education programs to judges and court staff.	

Analysis/Background:

According to the Law on the Courts, a judge must exercise his or her "right and obligation for continuous legal education during his/her term of office." LAW ON COURTS art. 51. Funding for such education is to come from the courts' budget. *Id*. The Code of Judicial Ethics of the Macedonian Judges' Association (MJA) also stresses the importance of continuing education. MACEDONIAN JUDGES' ASSOCIATION CODE OF JUDICIAL ETHICS art. 9 [hereinafter CODE OF JUDICIAL ETHICS]. Despite these provisions, several respondents characterized continuing legal education as a right, but not an obligation, of judges.

In March 1999, the MJA and the Ministry of Justice opened the Center for Continuing Education (CCE). The CCE is intended to provide continuing legal education for judges, court interns and other court staff, but not for lawyers and prosecutors. The CCE is managed by an executive board composed primarily of judges. It has a staff of five, and it has its own office space within the Skopje Court of Appeals building through a memorandum of understanding with the government. Most of the CCE's funding has come from the Soros Foundation's Open Society Institute, which has contributed approximately $188,000 over the last three years (1999-2002). ABA/CEELI has contributed $60,000 over the last two years. To date, the government has only provided the CCE's office space (as well as paying for some minor remodeling of the premises).

Since its inception, the CCE has held 44 continuing legal education seminars (on 31 topics), providing training to 1,217 judges (representing every court in Macedonia) and 553 court staff. As these numbers total far more than the actual number of judges and staff, the participants have attended multiple seminars. The following chart sets forth the annual number of training seminars and individuals trained:

	CLE Seminars	Judges	Court Interns	Others	Total Trained
1999	14	352	35	140	527
2000	19	456	173	61	690
2001	13	409	72	72	553
TOTAL	66	1217	280	273	1770

In addition, the CCE has conducted computer-training courses for judges and court staff, as reflected in the following chart:

	Computer Courses	Judges	Court Interns	Others	Total Trained
1999	4	11	3	16	30
2000	12	14	28	37	79
2001	10	4	14	57	75
TOTAL	26	29	45	110	184

Seminar topics are generally determined by the judges themselves through responses to questionnaires. Most of the trainers have been executive board members or judges who graduated from a "train-the-trainers" program held by ABA/CEELI in 2000. Written materials are provided to all participants in the seminars, often in the form of case studies used as the basis of discussion.

Factor 4: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.

Conclusion	***Correlation: Negative***
Although the law mandates that minorities be correspondingly represented in the court system, the percentage of ethnic Albanians on the courts is significantly lower than their percentage of the population as a whole. While women are prevalent among the ranks of basic court judges, the higher courts are still dominated by men.	

Analysis/Background:

The Law on the Courts provides that "[during] the election of judges and jury judges, there shall be no discrimination on the basis of sex, color of the skin, national and social origin, political and religious beliefs, property and social status," and that the corresponding representation of the minorities of the Republic of Macedonia shall be assured, but without any violation of the criteria determined by law. LAW ON COURTS art. 40.

In addition, the Framework Agreement requires specific constitutional amendments designed to insure significant minority representation on the Constitutional Court and the RJC. Specifically, it requires that three of the nine Constitutional Court judges and three of the seven RJC members be chosen by a majority of the Assembly representatives that includes a majority of the total number of representatives claiming to belong to minority communities. FRAMEWORK AGREEMENT art. 4.3 and Annex A, arts. 104, 109.

According to 2002 data from the RJC, the 656 currently sitting judges in Macedonia are composed of the following groups:

Ethnic Macedonian	577	(87.96%)
Albanian	43	(6.55%)
Vlach	13	(1.98%)
Serbian	12	(1.83%)
Other	11	(1.68%)

Current figures for each of the three levels of courts are not available, but 1998 data suggested that the ethnic breakdown at the basic courts and courts of appeal were roughly equivalent to the above figures. Four of the 19 judges currently on the Supreme Court are ethnic Albanian. While minority representation in the judiciary is greatest in areas of the country in which national minorities are in the majority, such representation is not proportional to the population in these areas. In Tetovo, for example, where approximately 70% of the population is Albanian, only 10 of 32 judges are Albanian (including the court president). Of the 27 basic court presidents, only one is Albanian. However, of the seven current members of the RJC, five are ethnic Macedonians and two are Albanians. Two of the seven current members of the Constitutional Court are ethnic Albanians, while the remaining members are ethnic Macedonians.

The most recent national population figures are from the 1994 census, which indicated that 23% of the population was Albanian, 4% was Turkish and 2% was Roma. According to the U.S. State Department's 2001 Macedonia Country Report on Human Rights Practices, ethnic Albanian claims that they constitute 30% of the population are "credible." U.S. DEPARTMENT OF STATE,

COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – 2001, MACEDONIA (2002) [hereinafter STATE DEPARTMENT 2001 HUMAN RIGHTS REPORT] One reason for poor representation of Albanians and particularly Roma is their lack of proportionate attendance in secondary schools and university.

The current overall gender breakdown of judges is as follows:

Men	331 (50.5%)
Women	325 (49.5%)

At present 14 of the 19 Supreme Court judges are men, as are eight of the nine Constitutional Court judges. Current figures for the other two levels of courts are not available, but 1998 data suggested that while women comprised 52% of basic court judges, men comprised 59% of appellate court judges. There are six men and one woman on the RJC.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.

Conclusion	***Correlation: Positive***
The Constitutional Court determines the ultimate constitutionality of legislation and other official acts, and its decisions are respected and enforced.	

Analysis/Background:

Article 110 of the Constitution authorizes the Constitutional Court to decide on the conformity of laws with the Constitution and to decide on the conformity of collective agreements and other regulations with the Constitution and laws. Anyone may initiate a constitutional challenge before the Court. RULES OF PROCEDURE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF MACEDONIA art. 12. The Court also may review the constitutionality of laws and regulations on its own initiative. *Id.* at art. 14. Article 112 of the Constitution provides that "[t]he Constitutional Court shall repeal or invalidate a law if it determines that the law does not conform to the Constitution," and that the Court "shall repeal or invalidate a collective agreement, other regulation or enactment, statute or program of a political party or association" if such instruments do not conform to the Constitution or law. Decisions of the Constitutional Court are "final and executive." CONST. art. 112. Officials failing to implement Constitutional Court decisions are subject to criminal prosecution. CRIMINAL CODE art. 377(3), O.G.R.M. 37/96.

If a question of the constitutionality of a law or an action arises in the course of a case in a regular court and the court determines the law in question is not in compliance with the Constitution "and the Constitutional provisions cannot be directly implemented," the court must adjourn its proceedings until the matter is resolved by the Constitutional Court. LAW ON COURTS art. 12. Each party shall have the right of appeal on the decision adjourning the procedure. *Id*. In practice, regular court judges rarely refer cases to the Constitutional Court.

Within the legal community, the Constitutional Court generally is well respected for the professionalism and independence of its decisions. However, while most of the Court's

judgments have been implemented properly, there have been recent attempts by the executive branch to undermine the Court, according to a number of respondents. When the Court issued a decision prohibiting political party ownership of property, the government allegedly delayed publication (and hence the date of effect) of the decision, allowing a party-controlled bank to shift assets. In February 2001, the heating was cut in the Court's building after the Court issued a decision unfavorable to the government (a Court official claimed that this was the result of an administrative error and not government pressure).

Factor 6: Judicial Oversight of Administrative Practice

The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.

Conclusion	***Correlation: Neutral***
The judiciary has the power to review administrative acts, but a tradition of courts compelling the government to act where a legal duty to act exists is lacking. Review of administrative acts by the courts is notoriously protracted and inefficient.	

Analysis/Background:

The judiciary has the power to review administrative acts. All such cases are filed in the Supreme Court, which has a separate administrative law division, composed of nine judges, that hears these appeals.

Under the Law on Administrative Procedure, an initial administrative decision may be appealed to a second-instance administrative body within 15 days of the decision. LAW ON ADMINISTRATIVE PROCEDURE art. 230, O.G.S.F.R.Y 47/86. Appeals of second-instance administrative decisions may be filed in the Supreme Court within 30 days of receipt of the decision. LAW ON COURTS art. 34(3); LAW ON ADMINISTRATIVE DISPUTES art. 24, O.G.S.F.R.Y. 36/77 [hereinafter LAW ON ADMINISTRATIVE DISPUTES]. In addition, a complainant may file an appeal in the Court if the second-instance body fails to issue a decision within 60 days of receipt of an administrative appeal from a first-instance body and within seven days of the complainant's repeated request. LAW ON ADMINISTRATIVE DISPUTES art. 26(1).

Under the Law on Administrative Disputes, the Supreme Court may vacate a final administrative ruling and remand it to the relevant agency or issue its own decision in the matter. If the Court remands such a ruling, the relevant agency must act on the court's decision within 30 days. If the agency fails to do so, the challenging party may make an application to the agency, to which the agency has another seven days to respond. If the agency still refuses to act after this period, the party may file another motion with the Court, which will ask the agency to explain its failure to act. If the agency fails to respond to the Court within seven days, the court may make a final decision in the matter and direct the relevant authority to execute it. LAW ON ADMINISTRATIVE DISPUTES arts. 62-65.

Judicial review of administrative decisions typically has been plagued by delays and protracted proceedings. There is a backlog of approximately 3,000 administrative cases at the Supreme Court, many of them several years old. Moreover, in cases in which the Court does not affirm the final administrative agency decision, it rarely issues a decision of its own; rather, it almost always remands the case to the first-instance administrative organ, adding further to the length of the proceedings. This is a result both of requirements in the law and ingrained practice by the Court.

There is no tradition of judicial power compelling the government to act, although the basis for such authority arguably is implicit in the constitution. There are instances in which the government has acted as a result of a court order. For example, as noted in the State Department 2001 Human Rights Report, a Supreme Court order to rerun the presidential elections in ethnic Albanian areas in November 1999 was obeyed, although the rerun was also reportedly marred by irregularities.

Factor 7: Judicial Jurisdiction over Civil Liberties

The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.

Conclusion	***Correlation: Neutral***
The judiciary does have exclusive jurisdiction relating to civil rights and liberties, and individuals are provided a direct avenue to the Constitutional Court to vindicate specified fundamental rights. In practice, however, the judiciary has not been effective in addressing human rights abuses.	

Analysis/Background:

The Law on the Courts provides that "promotion of the…respect of human…rights, within the framework of…the judicial office," is one of the three objectives and functions of the judiciary. LAW ON COURTS art. 3(B). The courts specifically have jurisdiction to render decisions concerning "rights of citizens" and are authorized to protect the freedoms and rights of individuals and citizens. *Id.* at arts. 5, 6. Final court decisions in the area of human rights (as well as all other areas within the jurisdiction of the judiciary) shall have "inviolable effect" and shall be abided by all, "under threat of legal sanctions." *Id.* at art. 13.

In addition to the role of the regular courts, the Constitutional Court has a role in protecting specified human rights. The Constitution provides that the Court shall protect the freedoms and rights of citizens relating to the freedom of communication, conscience, thought, and activity, as well as to the prohibition of discrimination among citizens on the grounds of sex, race, religion or national, social or political affiliation. CONST. art. 110(3). The Court's rules specify that a person claiming to be the victim of a violation of one of the rights enumerated in Article 110(3) of the Constitution has the right to file an application with the Court. RULES OF THE CONSTITUTIONAL COURT OF MACEDONIA sec. 51. Such applications must be filed within two months of the applicant's awareness of the violation, but no later than five years after that date. *Id.* Applicants are not required to exhaust their remedies in the regular courts.

According to one well-informed observer, there have only been a handful of Article 110(3) cases filed in the Court, and the Court has yet to find a violation of one of the enumerated rights. However, in one such case involving an ethnic Albanian complainant that subsequently was brought before the European Court of Human Rights (ECHR) in Strasbourg, the latter Court agreed with the Constitutional Court's determination that the complainant's protected rights had not been violated. *See* EUR. CT. H.R. (Appl. No. 50841/99) In another such case, the ECHR ruled a complaint inadmissible in part because the complainant failed to properly file a claim before the Constitutional Court. *See* EUR. CT. H.R. (Appl. No. 62059/00) An ECHR decision on admissibility currently is pending in another recent case in which the Constitutional Court rejected an Article 110(3) claim. In light of the above, the conclusion in the State Department 2001 Human Rights Report that "[t]he Constitutional Court has a mandate to protect the human rights of citizens but has not taken action in any case in this area" is perhaps somewhat unfair.

Regardless, the fact remains that very few people avail themselves of the vehicle provided by Article 110(3) to address human rights violations.

In general, the protection of human rights in Macedonia deteriorated significantly in 2001 with the onset of the ethnic-Albanian insurgency in February. Unfortunately, the judiciary did not play an effective role in addressing serious human rights abuses. As noted in the State Department 2001 Human Rights Report:

> Police conduct during the conflict in particular deteriorated significantly and resulted in serious human rights abuses . . . Police committed extrajudicial killings and killed civilians during combat operations; in most cases, the Government took insufficient steps, or no steps at all, to investigate and discipline responsible officers. Police often severely beat--at times, fatally--and otherwise abused suspects and prisoners, in particular ethnic Albanians and Roma. Arbitrary arrest and detention were serious problems. Police continued to compel citizens to appear for questioning, in spite of a 1997 law that requires that police first obtain a court order. The Government restricted privacy rights, and police deliberately destroyed and looted homes during the conflict. Police beat and intimidated journalists, and the Government restricted ethnic-Albanian media.

STATE DEPARTMENT 2001 HUMAN RIGHTS REPORT

Factor 8: System of Appellate Review

Judicial decisions may be reversed only through the judicial appellate process.

Conclusion	***Correlation: Positive***
Judicial decisions may be reversed only through the judicial appellate process.	

Analysis/Background:

The Law on the Courts provides that a judicial decision shall be modified or abolished only by an authorized court and in a proceeding determined by the law. LAW ON COURTS art. 13. This principle is respected in practice in the vast majority of cases, although there have been allegations that the government delayed publication of a Constitutional Court decision prohibiting political party ownership of property in order to undermine its effect (see Factor 5 above).

Factor 9: Contempt/Subpoena/Enforcement

Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.

Conclusion	***Correlation: Negative***
While the law provides for judicial subpoena, contempt, and enforcement powers, they are seldom invoked. When they are invoked, they are often ineffective or disrespected in practice.	

Analysis/Background:

The law provides judges with subpoena powers, but the process is ineffective in practice. Respondents cited the subpoena process as perhaps the single greatest cause of delay in civil proceedings. Civil subpoenas generally are sent by mail. Because people frequently fail to notify the authorities of address changes, such service often proves ineffective. The courts also use process servers to serve subpoenas, but most respondents suggested that these servers were often ineffective.
The law provides that when a properly served witness fails to appear in court (in either a civil or criminal proceeding), a judge may order that the witness be brought to court by force and may fine the witness. LAW ON CIVIL PROCEDURE art. 233, O.G.R.M. 33/98 [hereinafter LAW ON CIVIL PROCEDURE]; LAW ON CRIMINAL PROCEDURE arts. 229, 229(1) O.G.R.M. 37/96, 80/99 [hereinafter LAW ON CRIMINAL PROCEDURE]. Nevertheless, judges rarely use such powers. When a properly served witness fails to appear, judges typically issue only a warning, or simply send another subpoena. This is particularly the case in civil proceedings. In addition, two respondents identified a particularly acute problem in civil cases in which police officers are defendants. They stated that in such cases police officers routinely ignore or disregard subpoenas, without suffering any repercussions.

Judges also have contempt powers, but they rarely invoke them in practice. In both civil and criminal cases, judges may remove from the court and fine any participant or person attending a proceeding who disrupts the proceeding or fails to obey an order from the court. LAW ON CIVIL PROCEDURE arts. 301, 303; LAW ON CRIMINAL PROCEDURE art. 287. In civil proceedings, the maximum fine for contempt is four times the average national salary in the preceding month. LAW ON CIVIL PROCEDURE arts. 301, 303. The maximum contempt fine in criminal proceedings is twice the average national salary in the preceding month. LAW ON CRIMINAL PROCEDURE arts. 74(1), 287. Most respondents did not believe that lawyer misconduct was a significant problem, although it does occur.

Enforcement of civil judgments is another significant problem area. When a losing party fails to comply with a civil judgment, the winning party must file a new action in the civil execution department of the relevant court. Depending on the substantive law in question, the enforcement action may give the losing party the opportunity to virtually relitigate the original decision in the case and to take other procedural steps to delay enforcement. Most respondents stated that the law is skewed heavily in favor of debtors, making collection of debts through the courts extremely time consuming and inefficient.

Several respondents suggested that enforcement of decisions unfavorable to the government is particularly problematic. Examples cited included the prior government's failure to pay pensioners as ordered by the Supreme Court in a particular case and general problems in enforcing orders of refunds due from the customs bureau and orders of employee reinstatement.

In general, the overarching problem in the areas of judicial subpoena, contempt and enforcement authority is a pervasive lack of respect for judicial power throughout society. This lack of respect is evident in the behavior of litigants, lawyers, police, other executive branch organs, and the general public.

III. Financial Resources

Factor 10: Budgetary Input

The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.

Conclusion	***Correlation: Negative***
The Ministry of Justice prepares and submits a budget for the court system to the Ministry of Finance, which then submits it, with the rest of the national budget, to the Assembly. The judiciary does not now consider that it has a meaningful opportunity to influence its budget, or even to control the revenues that it generates. It is also largely recognized that the Macedonian judiciary is under funded.	

Analysis/Background:

The judiciary has little meaningful ability to influence the amount of funding it receives. The Ministry of Justice is responsible for the budget of the judiciary. *See* LAW ON THE ORGANIZATION AND OPERATION OF GOVERNMENT AGENCIES art. 17, O.G.R.M. 58/00. The Supreme Court maintains data concerning the budgetary requirements of the entire court system, submits a request to the Ministry of Justice, which then negotiates a final amount with the Supreme Court. That amount is then submitted to the Ministry of Finance and then to the Assembly. Several well-informed respondents noted that the Ministry of Finance invariably reduces the amount of the request before it goes to the legislature. The amount appropriated is transferred from the Ministry of Finance to the Ministry of Justice, and afterwards to the courts. There is testimony that these transfers are not completed as contemplated.

Courts also collect money from court fees, auctions of confiscated objects, fees for keeping deposits, etc. This money is kept in a separate account, and every 15 days it is transferred to the state budget. In 1997, the courts reached agreement with the Government that half of that money will be returned to the courts. This agreement reportedly has not been enforced, however.

The Macedonian Judges' Association has proposed legislation pursuant to which the judicial budget would be managed by the judiciary itself (this legislation is referred to as the "independent court budget"). Under the proposed law, funds would be directly allocated by the Assembly to the judiciary without first passing through the Ministry of Justice. The Ministry of Justice has expressed support for the passage of such a law and created a commission that has produced a draft law. However, certain key issues remain to be resolved, particularly as regards which organ in the judiciary will have the budgetary management authority. It is unclear when this draft will be finalized and submitted to Parliament. The MJA and most respondent judges view the independent court budget as by far the highest judicial reform priority, and they have great faith that adoption of such a law would produce dramatic benefits for the judiciary.

Not enough funds, no matter what the sources, are finding their way to the judiciary. According to one newspaper report, "Courts for many years have had a problem with paying their debts. The debt of the 27 trial courts for unpaid utilities, services of the lawyers assigned to the courts, salaries for lay judges, post office services, and expert witnesses is around $900,000." *Justice is Slow, but It Comes*, DNEVNIK, Mar. 21, 2000. Several respondents echoed these concerns.

The following chart summarizes the level of funding allocated to the judiciary over the past five years:

	Regular Courts		Constitutional Court	
Year	**Budget (in dinars)**	**Percentage of State Budget**	**Budget (in dinars)**	**Percentage of State Budget**
1998	1,015,276,027*	2.38%	24,311,816	.057%
1999	996,629,000*	1.98%	25,734,000	.051%
2000	1,214,654,000*	2.11%	15,943,000	.028%
2001	1,309,672,000**	1.73%	16,159,000	.021%
2002	1,252,039,000**	1.89%	15,914,000	.024%

See LAW ON THE BUDGET, O.G.R.M. 67/97; LAW ON THE BUDGET, O.G.R.M. 18/99; LAW ON THE BUDGET, O.G.R.M. 86/99, 95/00; LAW ON THE BUDGET, O.G.R.M. 10/01, 68/01; LAW ON THE BUDGET, O.G.R.M. 106/01.

Factor 11: Adequacy of Judicial Salaries

Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families, and live in a reasonably secure environment without having to have recourse to other sources of income.

Conclusion	***Correlation: Negative***
While judges are paid more than the average Macedonian, their salaries are very modest, particularly in comparison to the incomes of lawyers in private practice.	

Analysis/Background:

The average salary for basic court judges is approximately $200-$225 per month, while average salaries for appellate and Supreme Court judges are approximately $250-$275 and $275-$300, respectively. Salaries reportedly have been unchanged since at least 1996. In addition, judges receive a monthly supplemental payment, commonly referred to as the "lump sum" supplement. This payment was increased in 2001, and currently it stands at approximately $115, $145, and $175 for the three levels of courts, respectively.

According to the State Department 2001 Human Rights Report, the average monthly wage in Macedonia as of July 2001 was approximately $155, and the average cost of a month's supply of food for a family of four in 2001 was about twenty percent higher than the average wage.

Salaries for judges are thus well above the income for an average citizen of Macedonia. Nevertheless, there is a widespread opinion within the legal community that judicial salaries are too low and that they are insufficient to attract the best recruits. One court president noted that he has to rely on financial support from his parents in order to make ends meet. Many judges are leaving the bench for more lucrative jobs in private practice. As one respondent noted, a junior law clerk in a small private law firm in Skopje earns more than a basic court judge. The Ministry of Justice reportedly intends to prepare a new law on judicial salaries by the end of 2002.

* Including public prosecutors
** Excluding public prosecutors

Factor 12: Judicial Buildings

Judicial buildings are conveniently-located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.

Conclusion	***Correlation: Negative***
Courthouses are for the most part centrally-located, but many are in disrepair, are too small, and do not provide a respectable environment for the dispensation of justice.	

Analysis/Background:

For the most part, the location and accessibility of judicial buildings is adequate. However, the quality of the infrastructure is poor in many courts. Many buildings are not well maintained and are overcrowded, with judges having to share offices in cramped quarters. There are some positive exceptions. The new Skopje Basic Court II building is widely praised, and there is an office for each judge at the Tetovo Basic Court. The Supreme Court moved into a newly-renovated building in March 2002. Several respondents noted that the government has put an increasing amount of money into court buildings in recent years and that the situation is improving.

Factor 13: Judicial Security

Sufficient resources are allocated to protect judges from threats such as harassment, assault, and assassination.

Conclusion	***Correlation: Positive***
Serious threats against judges are extremely rare. A court security service has been established.	

Analysis/Background:

The threat of violence against members of the judiciary does not appear to be a serious problem in Macedonia. Threats to judges do occur, but they are rare. Most respondent judges suggested that they generally felt safe.

A court security force is provided for by law. LAW ON COURTS arts. 103-109. Court security guards are armed and present at each court. However, several respondents believed that there were insufficient numbers of guards at certain courts. In small courts, for example, there often are only enough guards for one shift, leaving the court unprotected after working hours. Court security guards provide no protection for judges outside court buildings. The Ministry of Justice installed metal detectors in all courts several years ago.

IV. Structural Safeguards

Factor 14: Guaranteed tenure

Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.

Conclusion	***Correlation: Positive***
With the exception of Constitutional Court judges, who serve nine-year terms, all judges have guaranteed life tenure.	

Analysis/Background:

All judges have life tenure. The Constitution provides that "[a] judge is elected without restriction of his/her term of office." CONST. art. 99. The Law on Courts contains a similar provision. LAW ON COURTS art. 21. The nine judges of the Constitutional Court are elected by the Assembly for nine-year, non-renewable, terms. CONST. art. 109. This is comparable to the terms of office for constitutional court judges in other European democracies.

Factor 15: Objective Judicial Advancement Criteria

Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.

Conclusion	***Correlation: Neutral***
The law and supporting regulations require that judges seeking higher positions in the judiciary be evaluated based on specific, objective criteria. The Republic Judicial Council, which is responsible for making nominations, has been criticized as overly political, and judges are ultimately appointed by the Assembly.	

Analysis/Background:

Judicial advancement is governed by the same rules and procedures applicable to judicial appointments, described in Factor 2 above. As noted, the RJC regulation outlining the criteria for the election and advancement of judges includes work experience in courts or public prosecutors' offices, the number of cases resolved during a year, the number of verdicts confirmed by the appellate courts, the number of reversals, and the average length of time before a decision is rendered. RJC REGULATION NO. 81/2 (June 21, 1994). Nevertheless, the objectivity of judicial advancement suffers from the same concerns regarding politicization that apply to initial judicial appointments (*See* Factor 2 Analysis/Background above).

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	***Correlation: Neutral***
All judges generally do have immunity, but the immunity of all but Constitutional Court judges may be lifted by a vote of the Assembly.	

Analysis/Background:

The Constitution grants judges immunity, but it provides that "the [National] Assembly decides on the immunity of judges." CONST. art. 100. In contrast, the Constitutional Court decides on the immunity of its membership. *Id*. at art. 111. The immunity of regular court judges therefore is weaker than that of legislative or executive officials because its ultimate application is left to the determination of another branch of government. By contrast, the Assembly and the government have ultimate authority over the immunity of representatives and ministers, respectively. *Compare* CONST. arts. 64, 89 *with* art. 100. Respondents were unaware of any recent instances in which the Assembly lifted a judge's immunity.

According to the Law on Courts, judges shall not be held responsible for the opinion or a decision made while reaching the court's decision, and shall not be detained without the approval of the National Assembly, unless he/she is caught *in flagrante* while committing a criminal offense punishable by at least 5 years imprisonment. LAW ON COURTS art. 65. The lifting of immunity may be executed only after the Assembly obtains an opinion from the RJC. *Id*. In addition, tort claims against judges by a dissatisfied party are prohibited. *Id.* at art. 61. Finally, the government is responsible for all the damage that a judge or lay judge inflicts upon citizens or legal persons with his/her illegal or irregular actions while performing his/her duties. *Id*. at art. 62.

Factor 17: Removal and Discipline of Judges

Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.

Conclusion	***Correlation: Neutral***
Objective criteria for the removal and disciplining of judges are set forth in the Constitution and relevant laws and regulations. A lack of transparency in the process has fueled speculation about the motives of certain removals and makes it difficult to evaluate the fairness of the process in practice.	

Analysis/Background:

The Constitution provides that a judge may be involuntarily removed from office if he or she: 1) is sentenced for a criminal offense to a prison term of at least six months; 2) "permanently loses the capability of carrying out a judge's office," as determined by the RJC; 3) commits "a serious disciplinary offense defined in law, making him/her unsuitable to perform a judge's office," as determined by the RJC; or 4) demonstrates "unprofessional and unethical performance of judge's office," as determined by the RJC. CONST. art. 99.

A determination of a judge's permanent loss of capacity to carry out the judicial function is based on "documentation with findings and opinion by a competent health commission." LAW ON THE RJC art. 20.

Actions that constitute "a serious disciplinary offense" warranting removal are defined in the Law on Courts, and include:

1. severe violation of the public order and peace that may ruin [the judge's] reputation and the reputation of the court;
2. political and other party activity;
3. performance of public function or profession;
4. causing serious deterioration of human relations in the court, that impair the performance of the judiciary activities; and
5. severe violation of the party's rights and the rights of others participants in the procedure that may damage the reputation of the court and judicial office.

LAW ON THE COURTS art. 69.

The RJC has promulgated guidelines identifying what constitutes "unprofessional and unethical performance" of judicial duties. *See* REGULATIONS ON THE PROCEDURE AND WAYS OF DETERMINING INCOMPETENT AND UNETHICAL PERFORMANCE OF THE JUDICIARY FUNCTION NO. 08-238/2, art. 22 (October 6, 1995) [hereinafter RJC REGULATION NO. 08-238/2]. An annex incorporated to the above-mentioned regulations lists the elements of "unprofessional" and "unethical" performance of judicial duties, of which there are 18 and 16, respectively. References in the text below are to specific elements listed in this annex (for example, "Element A(9)" refers to the ninth listed element constituting "unprofessional" performance). Each of the elements alone or in combination may place a judge's performance in question:

- The judge demonstrates an ignorance about the substantive laws and other regulations based upon which the case should be disposed . . . (Element A(2));
- The judge does not follow up with new legislative developments . . . (Element A(3));
- Frequent, unjustified cancellations of scheduled hearings (Element A(9));
- A frequent abolishment or alteration of the judge's decision by the higher court due to incorrect application of the substantive law (Element A(10));
- Attitude, conduct, or behavior of the judge which may raise a suspicion that he/she has an interest in a given case . . . (Element B(2));
- The judge does not comply with the principles of autonomy and independence (Element B(3));
- The judge does not respect and comply with the Code of Judicial Ethics … (Element B(7));
- The judge demonstrates an unequal treatment of the parties of any kind, and also demonstrates an improper closeness, tolerance, indulgence, intolerance, cruelty, impatiently, and the like (Element B(8)); and
- The judge demonstrates a power-loving, wish to rule the people, and an aspiration of power to manipulate (Element B(12)).

RJC REGULATION NO. 08-238/2, annex A, B.

The primary responsibility for the discipline and removal of judges rests with the RJC, although the Assembly has the ultimate authority to remove judges. Under the Constitution, the RJC proposes the dismissal of judges to the Assembly, and the latter body "carries out" the dismissals. CONST. arts. 68, 105; *see also* LAW ON COURTS art. 39. The RJC also has authority to decide on the "disciplinary answerability" of judges and to assess their "competence and ethics . . . in the performance of office." CONST. art. 105.

All initiatives to remove a judge are conducted by the RJC in a procedure closed to the public in which the judge in question has the right to reply to the charges against him. LAW ON COURTS art. 68. Allegations of a serious disciplinary offense may be filed with the RJC by the relevant court president, the president of a higher court or the general session of the Supreme Court. LAW ON THE RJC art. 25. In such procedures, a disciplinary commission composed of three RJC members is responsible for fact finding. *Id*. at arts. 23, 24. A proposal for the removal of a judge must be delivered to the judge within 15 days from the day it is reported to the RJC. *Id.* at art. 26. The disciplinary commission holds a hearing, in which it questions the judge, gathers the necessary papers, and conducts a general investigation to establish facts and circumstances regarding the charge. *Id*. at art 28. Once the investigation and hearing are completed, two-thirds of the RJC must vote for the removal of the judge for the removal to be forwarded to the Assembly. *Id*. at art. 30 (provisions in the Law on the RJC requiring the disciplinary commission to make an initial determination that an offense was committed, followed by the possibility of appeals to the full RJC and the Supreme Court, were ruled unconstitutional by the Constitutional Court). DECISION OF THE CONSTITUTIONAL COURT OF MACEDONIA, O.G.R.M. No. 26/93, Section 632.

Allegations of unethical or unprofessional performance may be filed with the RJC by the relevant court president, a higher court president, or the general session of the Supreme Court, or they may be initiated by the RJC itself. LAW ON THE RJC art. 32. In such cases, the RJC gathers data from the Ministry of Justice regarding the judge's performance, including the number of cases he or she has resolved and the quality and promptness of such decisions. *Id*. at art. 34.

A judge may be suspended from office during the investigation of a crime, during disciplinary proceedings, and during the dismissal procedure. LAW ON THE COURTS art. 70. The decision to suspend a judge may be made by the RJC upon the proposal of the Supreme Court, but only after the judge in question has presented a statement on the matter. *Id*.

According to the RJC, since 1996 it has proposed the removal of eight judges, all of whom subsequently were removed by the Assembly. Most of the removals proposed by the RJC have been for unprofessional performance, particularly for a low volume of decisions produced. This marks a significant change from the pre-RJC era, in which judges were almost never removed for poor performance.

Many respondents suggested that the RJC and Assembly processes were not adequately transparent, in that the specific reasons for a removal are never made public by the RJC or the Assembly. Several respondents criticized the RJC's handling of removal procedures, suggesting that certain judges had been removed for political reasons or that the RJC had failed to take action against judges that should have been removed. Others suggested that the RJC generally has acted properly in these matters.

The removal of Constitutional Court judges is not within the authority of either the RJC, or the Assembly. The Constitution provides that judges on the Court may only be removed if sentenced for a criminal offence to unconditional imprisonment for a minimum of six months, or if they permanently lose the capacity to perform their office duties, as determined by the Court itself. CONST. art. 111.

Factor 18: Case Assignment

Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.

Conclusion	***Correlation: Negative***
In principle, cases generally are assigned randomly. However, court presidents have discretion to assign cases to specific judges, and there is credible evidence that court registry clerks accept bribes to insure that cases are assigned to particular judges.	

Analysis/Background:

In principle, judges are assigned cases randomly through the sequential assignment of incoming cases. Judges are assigned a number, and each incoming case is numbered in the order received and assigned to the corresponding judge. The assignment of numbers to incoming cases is done by the clerks in the court registry office. This process is subject to abuse. One respondent lawyer stated that he routinely bribes the clerks in certain courts in order to insure that his cases are assigned to specific judges. Several other respondents confirmed that this practice is common in certain courts. In addition, court presidents retain discretion to assign incoming cases to specific judges. Several respondents suggested that court presidents use this authority in sensitive or high profile cases.

By law, a judge can be removed from a case only if he recuses himself or if the parties prove that there is a conflict of interest. LAW ON CIVIL PROCEDURE arts. 65-70; LAW ON CRIMINAL PROCEDURE arts. 36-40. A judge may be recused if he or she was involved in the case before, as a party or witness, is related to the parties or their legal representatives, adjudicated the case in the lower instance, or where there are other circumstances that would call impartiality into question. *Id*. When a judge discovers some reason for recusal, he or she is obligated to stop work on the case and inform the president of the court, who may then designate another judge to work on the case in question. *Id.*

Factor 19: Judicial Associations

An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.

Conclusion	***Correlation: Positive***
The Macedonian Judges' Association works to protect the interests of the judiciary and is one of the most active such associations in Central and Eastern Europe.	

Analysis/Background:

The Macedonian Judges' Association, a non-governmental and non-political organization, was established in December 1993. According to its mission statement, the MJA "strives towards enhancing the professional and social stature of judges and of the judiciary as a whole, and

encourages democratic reforms and full observance of the rule of law." The MJA includes 665 members. It has been largely funded by ABA/CEELI and other donor organizations, but also, it is starting to generate revenues through membership fees. Approximately $18 is automatically deducted from each judge's monthly salary to cover membership dues.

The MJA has been extremely active, conducting training programs in 1999 and in 2000, as well as helping to establish the CCE. It has also adopted a code of conduct (*See* Factor 21 below). The MJA does not actively lobby the Assembly, but it has been the driving force behind the effort to adopt the independent court budget law. As a result of its efforts, the Ministry of Justice created a working group that has produced a draft law that would give the judiciary greater control over its finaces. The MJA also produces two publications, the monthly *Judicial Informer* newsletter that contains information about MJA activities and the texts of important new laws, and the quarterly *Judicial Review* magazine that includes academic articles related to the judiciary. Most judge respondents were very satisfied with the level of activity of the association. However, the MJA is not without its detractors in the judiciary. Several respondents stated that the MJA has focused almost exclusively on judicial education, and it has not been a forceful voice for judges in other matters. The MJA is a member of the International Association of Judges and the European Association of Judges.

V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.

Conclusion	***Correlation: Negative***
Improper influence on judicial decision-making by court presidents, private interests, and other government branches is an ongoing problem in the judiciary.	

Analysis/Background:

Improper influence on judicial decision-making is an ongoing problem in the judiciary. Court presidents, private interests, and government bodies are all sources of outside influence on judges. One court president admitted trying to influence the decision of a judge in his court, in a case involving a municipal official who had authority to approve the building permit for a planned court building expansion.

Influence by private interests is also problematic, although difficult to quantify. One judge with many years of experience stated that he had been offered bribes on a number of occasions. One judge, with extensive experience in criminal cases, said that he had observed many instances in which wealthy defendants received favorable treatment in the courts. Several lawyers suggested that the bribing of judges is common, including one lawyer who believed it occurred in half of all commercial cases.

Several respondents cited examples of influence on the courts by other government branches. One judge stated that on two occasions members of the Assembly attempted to influence his decisions. Another example cited by more than one respondent was the custodial interrogation of two judges by police in a so-called "informative talks" procedure, a practice prohibited by law.

One judge stated publicly that he felt that the judicial power is under great influence, interference, and pressure from the executive power. *See* Judiciary: Power or Executor, NOVA MAKEDONIJA, Oct. 18, 1999.

Another common form of influence is that based on personal connections. Several judges indicated that it was not uncommon for friends or colleagues to ask them to expedite a particular case of personal interest (most judges contended this practice would not affect the ultimate decision in the case). In general, a certain air of informality persists in the courts, particularly at the lower levels. Judges frequently solicit the views of their colleagues on cases, and *ex parte* communications between judges and lawyers are not uncommon.

In its 2001 Human Rights Report, the State Department concluded equivocally that "[t]he judiciary is generally weak and was influenced by political pressure and corruption, in part due to low salaries; however, there were not widespread reports of abuse or systemic corruption." STATE DEPARTMENT 2001 HUMAN RIGHTS REPORT

Factor 21: Code of Ethics

A judicial code of ethics exists to address major issues such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.

Conclusion	***Correlation: Negative***
Some ethics provisions are included in the Law on Courts and the Macedonian Judges' Association's voluntary ethics code. However, these provisions are not comprehensive and the code lacks an effective enforcement mechanism. There is no mandatory ethics training for judges.	

Analysis/Background:

The MJA adopted a voluntary code of ethics in 1994. For the most part, it is more of a general identification of principles than a detailed proscription of specific conduct. However, the code does include some specific guidance to judges. For example, it discourages *ex parte* communications, without expressly prohibiting them: "Outside the courtroom, [a judge] shall always endeavor to provide for the presence of both parties at the same time, *i.e.*, counselor, attorney, plaintiff and the like." CODE OF JUDICIAL ETHICS OF THE MJA art. 7 (1994) [hereinafter CODE OF JUDICIAL ETHICS]. The code also requires judges to refrain from business activity, performing a non-judicial office, and providing legal assistance. *Id*. at art. 11. The code does not contain any enforcement mechanisms; the final article emphasizes that a judge is "morally liable" if he or she violates the code. *Id*. at art. 13. Nevertheless, failure to comply with the code is one of the explicit considerations of the RJC in its decisions on the removal of judges for incompetence and non-diligence. RJC REGULATION NO. 08-238/2, art. 22 (Element B(7)). There are no known cases in which the RJC removed or disciplined a judge for failure to comply with the code.

The Law on Courts also contains ethics provisions. Judges must not perform any other public function or profession, except where provided by law, and shall not belong to a political party or perform political activities. LAW ON COURTS art. 50. Judges who violate these provisions are subject to removal. *Id*. at art. 69. In addition, judges may not accept any gifts from parties or other persons with direct or indirect connections to a case before him or her. *Id*. at art. 54.

There is no compulsory judicial ethics training in Macedonia. Before joining the MJA, which is voluntary, a judge must sign a document stating that he has read and agrees with the statutes and regulations of the MJA, including its code of conduct.

Factor 22: Judicial Conduct Complaint Process

A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.

Conclusion	***Correlation: Neutral***
A process by which complaints may be registered exists, but there is a question as to how meaningful it is in practice.	

Analysis/Background:

There are several ways in which judges, lawyers, and the public may complain about specific judicial conduct. Such complaints may be filed with the relevant court president, the RJC, the Ministry of Justice, the Ombudsman's office, or the judicial committee of the Assembly. Complaints typically are forwarded to the relevant court president by the other institutions. Court presidents register each complaint in a designated complaint book. In principle, court presidents investigate the complaints and respond to each complainant.

A significant number of complaints are filed each year, most protesting delays in the processing of cases. According to the Ministry of Justice, it received approximately 600 complaints in 2001. According to the RJC, it has received approximately 600 complaints a year since its inception, although there has been a slight increase in the number of complaints each year. The Struga Basic Court, with 17 judges, received 58 complaints in 2001 (25 of them were referred to the court president from the other institutions in which complaints may be filed). It is unclear how effective and efficient the complaint process works in practice. One respondent suggested that the process typically is *pro forma* and rarely results in any action taken against the judge in question. Others suggested that the majority of complaints are groundless and filed by disgruntled losing litigants.

Factor 23: Public and Media Access to Proceedings

Courtroom proceedings are open to, and can accommodate, the public and the media.

Conclusion	***Correlation: Neutral***
While court proceedings generally are open to the public and media, exceptions to this principle are broadly worded, and journalists complain about obstacles to reporting on court proceedings.	

Analysis/Background:

The Constitution provides that "[c]ourt hearings and the passing of verdicts are public," but the public may be excluded "in cases determined by law." CONST. art.102. The principle that court procedures are open to the public is also included in the Law on the Courts. LAW ON COURTS art.

10. The public can be excluded from proceedings involving divorce, adoption, paternity determination, and guardianship. See LAW ON FAMILY, O.G.R.M. 80/92, arts. 105, 224.

Respondent journalists suggested some problems in this area. Whether a journalist can attend a court proceeding or not sometimes seems to depend upon the individual judge. Videotaping is permitted, but only with the permission of the President of the Supreme Court.

Although courtrooms generally are not spacious, there usually is room for observers to attend trials, although the situation varies from court to court. Courthouses in general are not well prepared to handle the public or the press: there are few public waiting rooms, few public restrooms, and no press centers.

There are indications of efforts to increase openness in the judiciary. The Law on Courts provides that "information regarding some specific cases or the work of the court shall be released to the public through the public media by the chief judge of the court, or other judge authorized by the chief judge, that shall take into consideration not to damage the reputation, honor and dignity of the person and not to damage the autonomy and independence of the court [sic]." LAW ON COURTS art. 89. A number of court presidents reportedly have appointed spokespeople who meet regularly with the press. In addition, in each of the last four years the Supreme Court has convened a public meeting at which performance reports from all the basic and appellate courts are analyzed and discussed. The Supreme Court's conclusions regarding the meeting are published. Journalists are welcome to attend the meeting. Journalists from four television stations and eight newspapers reportedly covered the 2001 meeting.

Factor 24: Publication of Judicial Decisions

Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.

Conclusion	***Correlation: Negative***
The Supreme Court issues a bulletin that only includes excerpts of selected decisions, and few appellate court decision excerpts are published.	

Analysis/Background:

Most appellate decisions are never published. In principle, the Supreme Court publishes excerpts of selected decisions in its bulletin. While in the past the bulletin was published once or twice a year, it has not been published since the end of 1999. Some appellate court decision excerpts are published occasionally in the MJA newsletter, the RJC review, or the Macedonian Business Lawyers Association newsletter. The Court of Appeals in Stip puts some of its decisions on CD-ROM and distributes them to the basic courts within its jurisdiction. Some decisions by the Supreme Court have been placed on private websites. Constitutional Court decisions are published in the official gazette, but usually the date of publication is months after the decision is announced.

In terms of access to unpublished decisions, a litigant typically receives a copy of the decision, but, as in the case of court records, a scholarly researcher or interested third party would have to get approval from the court president. If it is a case involving privacy concerns – juvenile, divorce or family law – specific restrictions may apply.

Factor 25: Maintenance of Trial Records

A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.

Conclusion	*Correlation: Negative*
Courts do not create verbatim transcripts of proceedings, and the court records that are maintained are not easily obtained by the public.	

Analysis/Background:

Courts do not produce verbatim transcripts of proceedings. The official record of any court proceeding consists solely of the judge's oral summary of the testimony of witnesses and the argument of counsel, which is transcribed by a court staff person. In addition to consuming considerable time, this process results in a record that reflects the judge's perception of the evidence and arguments.

In 2000, the Supreme Court, with funding from ABA/CEELI, initiated a pilot project by introducing court-recording equipment in the trial court in Berovo. The purpose of the project was to make available to the Court of Appeals a full and accurate recording of the trial court proceedings for use on appeal. The project has yet to be fully implemented because of the need to install compatible equipment in the Stip Court of Appeals so that the latter court can make use of the tapes.

While the official record is maintained in the court archives after a case is completed, it is only accessible to parties to the proceeding. Others seeking to see the record must demonstrate their interest in the matter to the court president. There is no system in place to allow for public access to trial records, and courts are not accustomed to handling such requests.

VI. Efficiency

Factor 26: Court Support Staff

Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.

Conclusion	*Correlation: Neutral*
The level of support staff varies from court to court. Although the statistics that are available suggest that staff levels meet or exceed mandated levels, many observers believe the courts are understaffed.	

Analysis/Background:

Judges are supported by professional and administrative staff. Court assistants help judges with legal research and in preparing drafts of court decisions. Court interns provide more limited

professional assistance. The number of court assistants and interns varies from court to court. In general, court assistants are more prevalent in the higher courts than in the municipal courts.
The specific number of authorized staff positions at each court is set in court rules approved by the Minister of Justice (the Law on Courts does specify that a court with more than seven judges shall have a secretary. LAW ON COURTS art. 92). For example, basic courts are supposed to have 2.4 employees per judge, with one typist per judge and one court assistant for every two judges. Although a number of courts reportedly have staff vacancies, available statistics do not support such claims. While statistics for all basic courts were not available, a survey of ten basic courts conducted by the Ministry of Justice in March 2002 indicated that these courts have 4.4 employees per judge. Two of the three courts of appeals reported ratios of 4.2 employees per judge. According to the RJC, there are a total of 1,780 non-judge employees in the judiciary as a whole, including court assistants, interns, typists, clerks and other employees. This figure represents an overall ratio of 2.7 staff workers for each judge. Nevertheless, many respondents suggested the courts are understaffed. According to the Ministry of Justice, its requests for funds for new court employee hires are invariably rejected by the Ministry of Finance.

Factor 27: Judicial Positions

A system exists so that new judicial positions are created as needed.

Conclusion	***Correlation: Neutral***
In principle a system exists such that new judicial positions are added as needed, but it is based on judicial performance quotas. In practice, new positions are rarely added.	

Analysis/Background:

The number of judges in each court is determined by the Assembly upon the proposal of the general session of the Supreme Court. LAW ON COURTS art. 41. Individual court presidents typically make requests for additional judges to the Supreme Court. The number of judges allocated to each court in principle is calculated by dividing the number of new cases filed in a given year by the quota of cases a judge is required to complete during the year, with consideration also given to the population of the relevant jurisdiction. The quota is set forth in local court rules, which establish monthly "norms" of completed cases that each judge must meet.

The notion of calculating a judge's performance by the number of cases completed is deeply ingrained in the judicial culture, and it perpetuates a quota mentality that undermines the administration of justice. Judges are always aware of the precise monthly norm they must meet, which results in an inherent pressure to sacrifice quality for quantity in decision-making.

In practice, new judicial positions are rarely added. Since 1996, several courts have made requests for new positions to the Supreme Court, but the latter has not proposed any additions to the Assembly.

There is a substantial backlog of cases in the courts. The situation generally is acknowledged to be worse in Skopje and other major cities than in smaller jurisdictions. The backlog problem is also more acute in the basic courts than in the appellate courts and the Supreme Court (with the exception of the Supreme Court's administrative cases (*See* Factor 6 Analysis/Background above)). An average civil case reportedly takes one and a half to two years to complete.

Respondents offered several reasons for the backlog of cases in the courts. Several pointed to the 1996 reorganization of the courts, in which specialized courts (including minor offence and commercial courts) were eliminated and the basic courts assumed first-instance jurisdiction over most disputes. LAW ON COURTS arts. 30, 32. Other factors cited included the substantial number of new judges, the increased complexity of cases, and ineffective subpoena and enforcement powers (*See* Factor 9 above).

Statistics provided by the Supreme Court indicate the status of the backlog in the courts over the past several years, as indicated below. The variation between figures from different years is due to the number of unregistered criminal and civil cases in the Macedonian Judiciary Report.

Basic Courts

	Pending Criminal Cases from Prior Year	Criminal Cases Filed	Criminal Cases Resolved	Pending Civil Cases from Prior Year	Civil Cases Filed	Civil Cases Resolved
1998	301,879	269,117	315,128	97,183	98,281	105,855
1999	255,840	173,718	270,806	85,820	81,387	92,569
2000	158,751	206,206	198,660	64,941	77,620	72,662

Courts of Appeal

	Pending Criminal Cases from Prior Year	Criminal Cases Filed	Criminal Cases Resolved	Pending Civil Cases from Prior Year	Civil Cases Filed	Civil Cases Resolved
1998	1,411	14,967	15,729	337	3,908	3,935
1999	649	16,059	16,212	1,567	16,252	16,856
2000	496	14.166	14.411	963	15.629	15.243

Supreme Court

	Pending Criminal Cases from Prior Year	Criminal Cases Filed	Criminal Cases Resolved	Pending Civil Cases from Prior Year	Civil Cases Filed	Civil Cases Resolved
1998	2	2	4			
1999	1	21	20	40	90	75
2000	2	19	20	53	91	98

According to the RJC, approximately 455,000 new cases were filed in 2001, subdivided as follows:

Civil	70,000
Criminal	35,000
Minor Offences	350,000
Total	455,000

Information about the number of cases concluded in 2001 was not available.

The State Department 2001 Human Rights Report concluded that "at times [the courts were] inefficient and slow." STATE DEPARTMENT 2001 HUMAN RIGHTS REPORT

Factor 28: Case Filing and Tracking Systems

The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.

Conclusion	***Correlation: Negative***
The current system of case filing and tracking is rudimentary, and it is very difficult to calculate the time between the initial filing of a case and its ultimate conclusion.	

Analysis/Background:

The standard case filing system is set forth in the internal court rules for each court. Each new case is entered into a register maintained by the court registry office and then assigned to a judge. The register is updated to reflect developments in the status of a case. Entries into the register are done by hand – there is no computer case filing system. Once the case is assigned to a judge, the progress of the case is left to the discretion of the judge. There is no mechanism to ensure that cases are heard in a reasonably efficient manner.

In addition, the number of registered cases pending in all courts does not necessarily coincide with the total number of actual cases in the system. When an appeal is filed, a case is re-registered as a new case with a new case number. If the case is remanded to the original court (as is typical), it is again re-registered as yet another new case. As a result, it is extremely difficult for the judicial system to track the time between the original filing of a case and the issuance of a final decision.

Factor 29: Computers and Office Equipment

The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.

Conclusion	***Correlation: Neutral***
The Macedonian judicial system has an insufficient number of computers and other equipment, but a significant computerization effort is underway.	

Analysis/Background:

Many courts lack computers, but the situation is improving as a result of a recent computerization effort. According to the Ministry of Justice, approximately $2.5 million was allocated for court computerization in the 2002 budget. The Ministry estimates that by the end of 2002 approximately 50-60% of the courts will have computers for every judge and relevant staff person. Currently four of the 27 basic courts are fully computerized, as the result of a pilot program. The appellate courts and the Supreme Court have ample computers for the most part. The installation of computers is hampered by inadequate power supplies in a number of courts. Computer training for judges and staff is also needed.

Factor 30: Distribution and Indexing of Current Law

A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally-recognized system for identifying and organizing changes in the law.

Conclusion	***Correlation: Negative***
Most judges do not have adequate access to new laws. Those systems for identifying and organizing changes in the law that do exist are unavailable to all but a handful of judges.	

Analysis/Background:

While judges have access to new laws, the situation is far from ideal. All laws are published in the official gazette, but most courts can only afford one or two subscriptions for the entire court. As a result, judges typically must rely on photocopied versions of the gazette for their own use. In some courts, librarians are responsible for identifying significant new laws and forwarding photocopies to relevant judges; in other courts, the judges must obtain the information themselves.

The Macedonian Legal Resource Center, an internationally-funded nonprofit organization, produces CD-ROMs containing an organized compilation of laws with regular updates. These resources are also available on the Internet through the organization's website. While lawyers in private practice make use of this and other similar services, for most courts, such resources are not practical because of a lack of computers and computer skills.

Notes

Notes

In 2001, ABA/CEELI put the finishing touches on its Judicial Reform Index (JRI), an assessment tool designed to examine a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, ABA/CEELI believes the JRI will prove to be a valuable tool for legal professionals working on judicial reform throughout the globe.

ABA/CEELI designed the JRI around fundamental international norms, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary; Council of Europe Recommendation R(94)12 "On the Independence, Efficiency, and Role of Judges"*; and the Council of Europe's *European Charter on the Statute for Judges*. Drawing on these norms, ABA/CEELI compiled a series of thirty statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary.

With each JRI, the thirty statements are evaluated to determine whether they correlate with the local conditions, and the results of the thirty separate evaluations are collected in a standardized format. For each factor, there is a description of the basis for this conclusion and an in-depth analysis, detailing the various issues involved. Cataloguing the data in this way permits users to easily compare and contrast performance of different countries in specific areas and—as JRIs are updated within a given country—over time. ABA/CEELI intends to capitalize on this feature with the development of a proprietary database that will house the entire collection of information.

In developing the JRI, ABA/CEELI drew upon a diverse range of experts, and ABA/CEELI acknowledges that this finished product owes an incredible debt to a long list of professionals. Many hours of pro bono time were devoted to this project over the course of the last several years, and ABA/CEELI thanks all of those who took part in this process. In addition, ABA/CEELI would like to recognize the United States Agency for International Development (USAID) for its support, which has been two-fold. From the very beginning of this project, USAID has provided intellectual support for the JRI concept, and, most recently, the USAID Missions in the field have been forthcoming with financial support for the completion of the country-specific reports. Without the support of all involved, the JRI would not have been possible. In the months and years to come, ABA/CEELI hopes to build upon these contributions seeking constructive feedback from these original supporters—and those who will use the JRI—to make this an even better tool in the future.

PROMOTING THE RULE OF LAW

ABA CEELI

CENTRAL AND EAST EUROPEAN LAW INITIATIVE